

Division of Securities  
Utah Department of Commerce  
160 East 300 South  
P.O. Box 146760  
Salt Lake City, Utah 84114-6760  
Telephone: 801 530-6600  
Facsimile: 801 530-6980

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**BEFORE THE DIVISION OF SECURITIES  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH**

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**THE MATTER OF:**

**ORDER TO SHOW CAUSE**

**STEPHEN W. NEBEKER, CRD #1370021;**

**Docket No. SD-05-0021**

**Respondent.**

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**TO: Stephen W. Nebeker  
1175 Mercedes Way  
Salt Lake City, UT 84108**

It appears to the Director of the Utah Division of Securities ("the Director") that Stephen W. Nebeker ("Respondent") has engaged in acts and practices that constitute violations of the Utah Uniform Securities Act, Utah Code Ann. § 61-1-1, et seq. ("the Act"). Those acts and practices are more fully described herein. Having reviewed the relevant facts discovered in the course of the Division staff's examination of this matter, the Director issues this Order to Show Cause in accordance with the provisions of § 61-1-20(1) of the Act.

**I. STATEMENT OF FACTS**

A. Stephen W. Nebeker ("Nebeker") is not currently licensed in any jurisdiction as a broker-dealer agent but was associated with Round Hill Securities Inc. ("Round Hill") as a

broker-dealer agent from April 7, 1998 through September 8, 2003.

- B. Prior to becoming associated with Round Hill, Nebeker was employed with PaineWebber Inc. from September 1994 to February 1998 and prior to that worked for Piper Jaffray Inc. from April 1993 to July 1994.
- C. Nebeker's CRD disciplinary history indicates that as a result of a customer complaint, Nebeker was discharged from Piper Jaffray in July 1994.
- D. Nebeker has taken and passed the Series 6, Investment Company Variable Contracts Representative Examination; the Series 7, General Securities Representative Examination; the Series 26, Investment Company Variable Contracts Principal Examination; the Series 63 Uniform Securities Agent State Law Examination; and the Series 65, Uniform Investment Adviser State Law Examination.
- E. On or about October 1, 2003, the Division of Securities ("Division") received a complaint letter from an attorney of Helen Wyatt ("Wyatt") concerning Nebeker.
- F. The complaint letter alleged that Nebeker had excessively traded Wyatt's account, made unsuitable recommendations, and failed to disclose costs and fees associated with the investments sold to Wyatt.
- G. The Division's examination into Wyatt's complaint letter revealed the following:

**Excessive Trading**

1. Excessive trading is the fraudulent practice whereby a broker-dealer agent uses his/her influence over the customer to induce excessive trading for the purpose of generating high commissions, while ignoring the investment objectives of the client, and ignoring the fiduciary responsibility of the broker-dealer agent.

2. Two of Wyatts accounts, an IRA account and a trust account, were excessively traded by Nebeker to generate commissions.

**Wyatt; IRA Account**

3. On or about October 10, 2000, Round Hill opened an IRA account for Wyatt which listed Nebeker as the broker-dealer agent of record on the account.
4. From September 2001 to August 2003, Wyatt deposited \$41,403.17 into Wyatts IRA account. During that time, the account generated \$18,426.77 in commissions and ticket charges.
5. The portfolio was turned over an average of 9.6 times a year. Given the commissions and other expenses, the account would have to earn 44.78% annually to merely break-even.
6. During the 24 months of analysis, Wyatt's account value decreased from an initial deposit of \$41, 403.17 to \$13, 960.
7. According to trade tickets and confirmations provided by Round Hill, most of the transactions in Wyatt's account were made pursuant to Nebeker's recommendations.
8. Many of the stocks in Wyatt's account were purchased, sold, and in many cases repurchased again, within a matter of days or weeks.
9. According to Round Hill's initial new account form, Wyatt is retired with an approximate annual income of \$50,000, an approximate net worth of \$500,000 and investment objectives of "growth [and] income."

10. At the time of the account opening, Wyatt was 61; howeverWyatts initial new account form lists the “approximate age” of Wyatt as 50.
11. An updated new account form was completed on March 5, 2002. According to the updated new account form, Wyatt is retired with an approximate annual income of \$75,000, an approximate net worth of \$1,700,000 and investment objective of “growth – trading.”
12. Another updated new account form was completed in August of 2002. According to this updated new account form, Wyatt is retired with an approximate annual income of \$75,000, an approximate net worth of \$1 million and an investment objective of “aggressive.”
13. Wyatt’s signature does not appear on the initial or updated forms.
14. Wyatt represents that at the time she met Nebeker she informed him that she was a retired widow with a limited net worth and she was only interested in safe, conservative investments because she needed to preserve and safeguard the money her deceased husband had left her for retirement.
15. Round Hill provided a copy of a “happiness letter”, dated August 9, 2002 (just prior to Wyatt’s account form being updated on August 12th to reflect a new investment objective of “aggressive”).
16. The “happiness” letter was sent by Benton, Nebeker’s supervisor, and is a standard form letter Round Hill sends out based on the activity in a client’s account. The letter stated:

“It is the policy of [Round Hill], along with branch managers

such as myself, to periodically review client accounts in the interest of confirming that the activity in an account is consistent with the goals, time horizon, financial capability and risk tolerance of the account owner. During a standard review of customer accounts, your accounts have been brought to our attention. First of all, I would like to express my appreciation for your business. You are a valued client and I want to ensure that we maintain open lines of communication. The purpose of this letter is not to restrict the manner in which you conduct your business at [Round Hill], but rather to advise you of the inherent risks associated with your account activity and positions, and to confirm that they are in line with your current investment objectives. Please sign below to confirm that you are aware of the activity and holdings in your accounts...”

17. Wyatt signed this letter on August 12, 2002 (the same day that her account documentation was updated to reflect an “aggressive” investment objective).
18. Despite Wyatts signature, the Division deems this letter to be insufficient proof that Wyatt was in fact aware of the activity and the risks associated with said activity.
19. The “happiness letter” is vague and ambiguous in that it does not specifically discuss what type of activity is going on in Wyatt’s account, why this activity might be problematic, or the “inherent risks” associated with the activity in her account.

**Wyatt; Trust Account**

20. On or about December 7, 2000, Round Hill opened an account for the Wyatt Trust listing Wyatt as the trustee and Nebeker as the broker-dealer agent of record on the account.
21. From July 2000 to August 2003, Wyatt deposited \$150,000 into the trust account.

During that time, the account generated \$41,167.69 in commissions and ticket charges.

22. The portfolio was turned over an average of 4.92 times a year. Given the commissions and other expenses, the account would have to earn 17.80% annually to merely break-even.
23. During the 37 months of analysis, Wyatt's account value decreased from an initial deposit of \$150,000 to \$54,492.03.
24. According to trade tickets and confirmations provided by Round Hill, most of the transactions in Wyatt's account were made pursuant to Nebeker's recommendations.
25. Many of the stocks in the account were purchased, sold, and in many cases repurchased again, within a matter of days or weeks.
26. There was no initial new account form for Wyatt's trust account in the account documentation provided by Round Hill. Round Hill did provide three account update forms: the first dated March 12, 2002, the second dated August 12, 2002 and signed by principals on August 12<sup>th</sup> and 13<sup>th</sup>, and the third dated August 12, 2002 and signed by principals on August 15<sup>th</sup> and 16<sup>th</sup>.
27. According to the March 2002 updated new account form, Wyatt is retired with an approximate annual income of \$50,000 (despite the fact that the March 2002 updated account form for Wyatt's IRA lists Wyatt's annual income as \$75,000) and an approximate net worth of \$1,700,000. Wyatt's investment objective is listed as "growth, trading."

28. According to the August 2002 updated new account forms, Wyatt is retired with an approximate annual income of \$75,000 and an approximate net worth of \$1 million. Wyatt's investment objective is listed as "aggressive growth."
29. Wyatt's signature does not appear on the initial or updated forms.
30. Wyatt represents that at the time she met Nebeker she informed him that she was a retired widow with a limited net worth and she was only interested in safe, conservative investments because she needed to preserve and safeguard the money her deceased husband had left her for retirement.
31. Round Hill provided a copy of a "happiness letter", dated August 9, 2002 (just prior to Wyatt's account form being updated on August 12th to reflect a new investment objective of "aggressive growth"). This letter was sent by Richard Benton, Nebeker's supervisor, and is the same standard form letter Round Hill sent to Wyatt regarding her IRA account.
32. Wyatt signed this letter on August 12, 2002 (the same day that her account documentation was updated to reflect an "aggressive growth" investment objective).
33. Despite Wyatt's signature, the Division deems this letter to be insufficient proof that Wyatt was in fact aware of the activity and the risks associated with said activity. This letter is vague and ambiguous in that it does not specifically discuss what type of activity is going on in Wyatt's account, why this activity might be problematic, or the "inherent risks" associated with the activity in her account.
34. According to Nebeker's CRD disclosure, on November 6, 2003, Wyatt filed a

lawsuit in U.S. District Court. On December 18, 2003, Wyatt's suit was moved to NASD Arbitration. On August 31, 2004, Wyatt reached a settlement agreement whereby Wyatt received \$90,000 from Round Hill and/or Nebeker.

35. It is unclear from the CRD record whether Nebeker contributed any amount to the \$90,000 paid to Wyatt.

### **CAUSES OF ACTION**

#### **COUNT 1**

##### **(Suitability under R-164-6-1(g)(C)(3) of the Utah Administrative Code)**

36. R164-6-1(g)(C)(3) of the Utah Administrative Code ("UAC") deems a dishonest or unethical business practice to recommend "to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objective, financial situation and needs and any other relevant information known by the broker-dealer."
37. The above findings evidence that Nebeker violated R164-6-1(g)(C)(3) of the UAC.

#### **COUNT II**

##### **(Excessive Trading under R-164-6-1(g)(C)(2) of the Utah Administrative Code)**

38. R 164-6-1(g)(C)(2) of the UAC deems it a dishonest and unethical business practice to induce "trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account."
39. The above findings evidence that Nebeker violated R164-6-1(g)(C)(2) of the



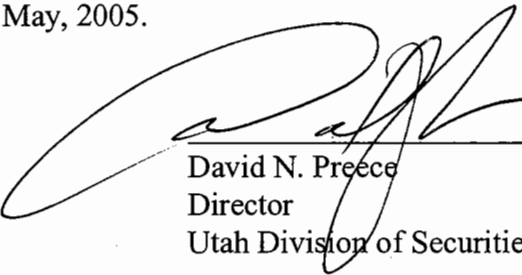
UAC.

**ORDER**

The Director, pursuant to Utah Code Ann. § 61-1-20, hereby orders Respondent to appear at a formal hearing to be conducted in accordance with Utah Code Ann. §§ 63-46b-4 and 63-46b-6 through -10, and held before the Utah Division of Securities. The hearing will occur at the place, date and time set forth in the Notice of Agency Action. If Respondent fails to appear at the hearing, an Order may be issued and a fine imposed by default against Respondent, as provided by Utah Code Ann. § 63-46b-11. At the hearing, Respondent may show cause, if any they have:

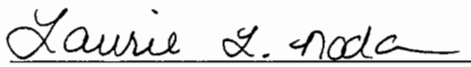
1. Why Respondent should not be barred from associating with a licensed broker-dealer or investment adviser in this state.
2. Why Respondent should not be ordered to pay a fine to the Division in an amount to be determined at the hearing; and
3. Why Respondent should not be found to have engaged in the violations alleged by the Division.

**DATED** this 20 day of May, 2005.

  
David N. Preece  
Director  
Utah Division of Securities



Approved:

  
Laurie L. Noda  
Assistant Attorney General

Division of Securities  
Utah Department of Commerce  
160 East 300 South  
P.O. Box 146760  
Salt Lake City, Utah 84114-6760  
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**BEFORE THE DIVISION OF SECURITIES  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH**

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**IN THE MATTER OF:**

**STEPHEN W. NEBEKER,  
CRD #1370021**

**Respondents.**

**NOTICE OF AGENCY  
ACTION**

**Docket No. SD-05-0021**

**THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENT:**

The purpose of this Notice of Agency Action is to inform you that the Division hereby commences a formal adjudicative proceeding against you as of the date of the mailing of this Notice. The authority and procedure by which this proceeding is commenced are provided by Utah Code Ann. §§63-46b-3 and 63-46b-6 through 11. The facts on which this action is based are set forth in the foregoing Order to Show Cause.

Within thirty (30) days of the date of this Notice, you are required to file a written response with the Division. The response you file may be helpful in clarifying, refining or narrowing the facts and violations alleged in the Order to Show Cause.

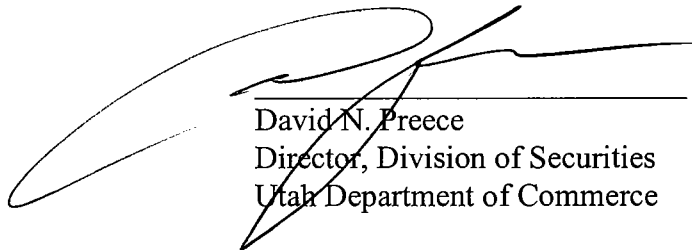
After your response is filed, a hearing will be set at a date and time agreed upon by the parties.

If you fail to file a written response, as set forth herein, or fail to appear at the hearing, you will be held in default, an Order to Cease and Desist will enter, and a fine will be imposed against you in accordance with Utah Code Ann. §64-46b-11.

The presiding officer in this case is David N. Preece, Director, Division of Securities, 160 East 300 South, P.O. Box 146760, Salt Lake City, UT 84114-6760, telephone (801) 530-6600. The Administrative Law Judge will be Clinton D. Jensen, Utah Department of Commerce, 160 East 300 South, P.O. Box 146701, Salt Lake City, UT 84114-6701, telephone (801) 530-6021. At such hearing, the Division will be represented by the Attorney General's Office, 160 East 300 South, P.O. Box 140872, Salt Lake City, UT 84114-0872, telephone (801) 366-0310. At the hearing, you may appear and be heard and present evidence on your behalf.

You may attempt to negotiate a settlement of the matter without filing an answer or proceeding to hearing. Should you so desire, please contact the Utah Attorney General's Office. Questions regarding the Order to Show Cause should be directed to Laurie Noda, Assistant Attorney General, 160 E. 300 South P.O. Box 140872, Salt Lake City, UT 84114-0872, telephone (801) 366-0310.

Dated this 20 day of May, 2005.

  
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David N. Preece  
Director, Division of Securities  
Utah Department of Commerce



**Certificate of Mailing**

I certify that on the 23<sup>rd</sup> day of May, 2005, I mailed, by certified mail, a true and correct copy of the Notice of Agency Action and Order to Show Cause to:

Stephen W. Nebeker  
1175 Mercedes Way  
Salt Lake City, UT 84108

Certified Mail # 7004 1160 0004 17306842

Pamala Radzinski  
Executive Secretary